IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 54 of 1998 with RFA Nos. 52, 132 and 124 of 1998.

Judgement reserved on: 6.7.2007.

Date of decision: 13.7.2007.

(For title, please see reverse)

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants	**:**	**Mr M.S.Chandel, Advocate General, with Mr. M.L.Chauhan, Addl. Advocate General.**
For the Respondents	**:**	**Mr. G.D.Verma, Sr. Advocate with Mr. B.C.Verma, Advocate, for respondents in all the appeals except RFA No. 124 of 1998.** **None for respondent in RFA No. 124 of 1998.**

Kuldip Singh, Judge.

This judgement shall dispose of four appeals, i.e. RFA Nos. 54, 52, 132 and 124 of 1998, arising out of a common award, dated 13.6.1996, passed by the learned District Judge, Shimla, enhancing compensation in four land reference petitions, in the manner mentioned below:-

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Whether the reporters of the local papers may be allowed to see the Judgment?

Sr. No.	Number and name of the petition	Name of the petitioners.	Amount of compensation awarded.
1.	46-S/4 of 1994 Atma Ram and others vs. State of H.P.	Sh. Atma Ram, Shri Parma Nand and Smt. Soni Devi	Rs. 96,620/-
2.	44-S/4 of 1994 Sh. Balak Ram vs. State of H.P.	Shri Balak Ram	Rs. 43,702/-
3.	45-S/4 of 1994 Mohinder Singh vs. State of H.P.	Sh. Mohinder Singh	Rs. 33,100/-
4.	41-S/4 of 1994 Sh. Nand Lal vs. State of H.P.	Sh. Nand Lal	Rs. 42,712/-

The parties are referred in the same manner, as in the impugned award.

2. RFA No. 54 of 1998, has arisen out of Land Reference Case No. 46-S/4 of 1994, RFA No. 52 of 1998 from Land Reference Case No. 44-S/4 of 1994, RFA No. 132 of 1998 from Land Reference Case No. 45-S/4 of 1994 and RFA No. 124 of 1998 from Land Reference Case No. 41-S/4 of 1994.

3. The brief facts are that State of Himachal Pradesh acquired land covered in Land Reference Petition Nos. 46-S/4 of 1994, 44-S/4 of 1994 and 45-S/4 of 1994, for construction of Kalbog-Quinal road in the year 1989, vide Notification, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act), which was published on 14.10.1989 and land covered in land Reference Petition No. 41-S/4 of 1994, vide notification, under Section 4 of the Act, which was published on 22.7.1989. The Land Acquisition Collector, (for short,

Collector), announced the award of three petitions Nos. 46-S/4 of 1994, 44-S/4 of 1994 and 45-S/4 of 1994, on 8.6.1992, and of fourth petition, namely 41-S/4 of 1994, on 29.12.1991. The details of compensation awarded, area of land, trees which were standing on the acquired land of petitioners and mentioned in the impugned award are as follows:-

Sr. No.	**Name of case**	**Area of land**	**No. of apple trees**	**Amount of compensation awarded.** **For apple trees** **For land.**
1.	Sh. Atma Ram & others vs. State of H.P.	1-06	26	Rs.21,655/- Rs.3838.12
2.	Sh. Balak Ram vs. State of H.P.	0-11	13	Rs.10925.50 Rs.1547.60
3.	Sh. Mohinder Singh vs. State of H.P.	0-8	10	Rs. 8275/- Rs.1113.08
4.	Sh. Nand Lal vs. State of H.P.	0-19	13	Rs.10678/- Rs.38774.25

4. The land owners were not satisfied with the award made by the Collector, therefore, they made Reference Petition Nos. . 46-S/4 of 1994, 44-S/4 of 1994 and 45-S/4 of 1994 and 41-S/4 of 1994, which were disposed of by the learned District Judge by a common award, dated 13.6.1996, which has been challenged in the above appeals.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned Advocate General has submitted that the District Judge has erred in assessing the market value of the fruit trees separately, his contention is that land and fruit trees are to be assessed as one unit and not separately. He has urged that on this ground alone, the impugned award is liable to be set-aside. He has also submitted that Collector had already awarded just compensation to the petitioners which does not require any further increase. The learned Senior Advocate representing the land owners- petitioners, has submitted that the fruit trees have been rightly assessed separately in the impugned award and for this reason, no fault can be found with the impugned award. He has supported the impugned award.

7. It was the common case of the parties before the learned District Judge that the Collector had assessed the market value of the acquired land and supplementary award with respect to market value of the trees was to be made later on, but in fact, no supplementary award for the trees was passed by the Collector. Therefore, the learned District Judge proceeded to assess the market value of the trees.

8. The contention of learned Advocate General is that fruit trees are part of land and market value of land will include the market value of fruit trees. He has submitted that land and fruit trees cannot be assessed separately. The separate assessment of land and fruit trees amounts to double assessment, once for the land and second time for the fruit trees and the Act does not permit this. The learned Senior Advocate for the claimants- petitioners on the other hand has

submitted that there are instructions of the Government for separate valuation of land and fruit trees, and, therefore, Collector and Government cannot be permitted to violate Government instructions to assess the market value of land and not of the fruit trees separately.

9. The separate assessment of fruit trees came earlier for scrutiny before this Court in **Collector LAC, Mandi** vs. **Karam Singh,** [Latest HLJ 2000 (HP) 694]. A Division Bench of this Court after noticing State of Haryana vs. Gurcharan Singh & another etc. [1995 (1) Scale 125], has held as follows-

> "The Director of the Horticulture of the State Government while assessing the market value of the fruit bearing trees has been adopting the formula of Shri Harbans Singh. The land Acquisition Collectors of the State have applied and adopted the same formula in awarding compensation of the fruit bearing trees separately. In these factual position and circumstances, the State of Himachal Pradesh and the Land Acquisition Collector cannot be permitted to urge that they are not obliged to pay the amount of compensation on the basis of the Standing Order No. 28 and Shri Harbans Singh formula for acquired lands and fruit bearing trees separately. The Land Acquisition Collector is the agent of the State Government who makes offer to the claimants of the amount of compensation awarded in the awards and if the offer so made is not acceptable to the claimants, the claimants are entitled to receive the amount of compensation under protest and make reference petitioners under Section 18 of the Act for enhancement of the amount of compensation. Therefore, the State Govt. and the Land Acquisition Collector, who are appellants before us in these appeals

cannot be permitted to raise the plea that the awards of the Collector and enhancement of the amount of compensation by the District Judges and Additional District Judges based upon the Government Standing Order, provisions contained in the Himachal Pradesh Land Records Manual and Shri Harbans Singh formula which allow compensation in respect of the land and fruit bearing trees separately. Nothing contrary has been brought to our notice and, therefore, we do not think it proper to disturb the awards of the Courts below making enhancement of the amount of compensation for the land and the fruit bearing trees separately. These cases are squarely covered by the ratio of the judgement of the apex Court in State of J&K Vs. Mohammad Mateen Wani and others (supra) and we do not find any merit in these appeals filed by the State and the Land Acquisition Collector challenging the awards on the grounds of assessment of compensation for lands and fruit trees separately."

10. In **State of J.& K vs. Mohammad Mateen Wani and others** [AIR 1998 SC 2470], the Hon'ble Supreme Court in para-11 of the judgement, has held as follows:-

"As regards the compensation in respect of fruit bearing trees and tubewells the High Court had relied upon the Government circular which allows compensation in respect of fruit bearing trees and tubewell, separately. Nothing contrary has been brought to our notice and , therefore, we do not think it proper to disturb the said finding".

11. In **Ramesh Chand and others vs. Land Acquisition Collector** [Latest HLJ 2003 (HP) 977], it has been held in paras-9 and 10 of the judgement, as follows:-

> "Another attempt was also made by the learned Advocate General, when he made submission that trees and land is not to be separately assessed. According to him, applicants are either entitled to the price of the land as an orchard land or of the trees. In my considered view, this plea is no more open in view of the standing order No.28 issued by the Finance Commissioner, Himachal Pradesh, as well as decision of Division Bench of this Court in Collector L.A.C.Mandi Vs. Karam Singh and others, and other connected cases (latest HLJ 2000 (HP) 694). In this case after relying on standing order No.28 issued by the Financial Commissioner, Himachal Pradesh and also a taking note of Harbans Singh's formulae, it was held that land as well as trees standing thereon are to be assessed separately."

> "For taking this view reliance was placed on the decision of the Supreme Court in State of J&K, appellant Vs. Mohammad Mateen Wani and others, respondents (AIR 1998 SC 2470). In this case it was held that for the land with fruit bearing trees separate compensation for fruit bearing trees and tube well etc. was payable in view of the circulars issued by the Government of Jammu and Kashmir. In the case in hand, Standing Order No.28 issued by the Financial Commissioner, Himachal Pradesh is there, whereunder while assessing compensation price of the land, trees, structures etc, is to be separately assessed which will from the basis for assessment of compensation. In this view of the matter, the appellant being not entitled to the payment of

> compensation separately for trees and land argued on behalf of the respondent is hereby rejected".

The contention of the learned Advocate General has no force that the land and fruit trees cannot be assessed separately. The separate assessment of the land and fruit trees has been approved in **Collector LAC, Mandi** vs. **Karam Singh,** and **Ramesh Chand and others vs. Land Acquisition Collector** (supra) by this Court.

12. It has come on record that Atma Ram etc., Balak Ram, Mohinder Singh and Nand Lal had 26, 13, 10, 13 apple trees, respectively, on the acquired land. The parties have not raised any dispute regarding number of trees and the quantum of assessment made by the Horticulture Department on the basis of Harbans Singh formula of the year 1966 for assessing the market value of the trees. Notification, under Section 4 of the Act for acquiring the land was issued in the year 1989. The prices had increased many times from the year 1966 to the year 1989 when the land with fruit trees was acquired. PW 3 A.C.Sharma has proved consumer price index number Ex. PW 3/A, prepared for the year 1966 to 1994 by the Labour Bureau. As per Ex. PW 3/A, in Himachal Pradesh there was 456% increase in the price index up to 1989 taking 100 as base in the year 1965.

13. In **Union of India and others** vs. **Khazana Ram and others** [1998 (1) Sim. L.C. 479], a Division Bench of this court has given five times increase regarding the assessment made in the year 1989 on the basis of Harbans Singh formula. In para-9 of the judgement, it has been held as under:-

> "So far the present case is concerned, the year of assessment is 1989 and if we rely upon the Price index filed along with the replies to the stay applications in the writ petitioners, the Price Index has arisen from 79.7 in the year 1966 to 428.8 in the year 1988 taking the Price Index as 100 for the base year 1970-71. The Price Index for the year 1989 has been shown 176.4 by taking 100 for the base year 1981-82. Therefore, the increase from 1966 to 1989 will be approximately five times. Accordingly, we hold that the ends of justice would be met if the claimants are given compensation five time of the compensation assessed by the Department as per Annexure PB to the writ petitions and Ext.RW-1/A on the file of the District Judge".

14. The learned District Judge after taking into consideration the price rise reflected in Ex. PW 3/A, has allowed four times increase in the market value of the fruit trees assessed on the basis of Harbans Singh formula of the year 1966, as follows:-

Names	**Amount awarded by the Collector**	**Increase given by the learned District Judge.**	**Total amount.**
Atma Ram	Rs. 21,655/-	Four times	Rs.86620/-
Balak Ram	Rs.10,925/-	Four times	Rs.43702/-
Mohinder Singh	Rs. 8275/-	Four times.	Rs.33100/-

The case of Nand Lal was considered separately and he was awarded Rs. 42712/- for trees by adopting the same principle, as was applied for giving increase to Atma Ram, Balak Ram and Mohinder Singh.

15. The learned District Judge, has rightly given four times increase over the assessment of fruit trees made by Horticulture Department on the basis of Harbans Singh formula, such increase is supported by Ex. PW 3/A, consumer price index. In **Khazana Ram's** case (supra), the acquisition was of the year 1989 and in the present case also the acquisition is of the year 1989. In **Khazana Ram's** case also, a Division Bench of this Court has given five times increase to the valuation of the fruit trees assessed on the basis of Harbans Singh formula. In the present case, the increase has been given only four times. In these circumstances, no case for interference is made out.

16. No other point was urged.

17. In view of above discussion, all the appeals, being RFA No. 54 of 1998, RFA No. 52 of 1998, RFA No. 132 of 1998 and RFA No. 124 of 1998, are dismissed and impugned award, in each appeal, is confirmed. No costs.

July 13, 2007. **(Kuldip Singh)**
(*Hem)* **Judge.**

1. **RFA No. 54 of 1998**

State of H.P. & ors. ..... Appellants.

Vs.

Atma Ram & ors. ..... Respondents.

2. **RFA No. 52 of 1998**

State of H.P. & ors. ..... Appellants.

Vs.

Balak Ram ..... Respondent.

3. **RFA No. 132 of 1998**

State of H.P. & ors. ..... Appellants.

Vs.

Mohinder Singh ..... Respondent.

4. **RFA No. 124 of 1998**

State of H.P. ..... Appellant.

Vs.

Nand Lal ..... Respondent.